

AMENDED IN ASSEMBLY MARCH 14, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1796

**Introduced by Assembly Member Wilk
(Coauthor: Assembly Member Wagner)**

February 4, 2016

An act to amend Sections 387, 1032, and 1038 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1796, as amended, Wilk. Civil actions: intervention.

Under existing law, any person who has an interest in a matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. Existing law provides that a third person may become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, uniting with the defendant in resisting the claims of the plaintiff, or demanding anything adversely to both the plaintiff and the defendant, by filing a complaint setting forth the grounds upon which the intervention rests, as specified.

This bill would require that a person permitted to intervene *in an action or proceeding, deemed the intervenor*, file a complaint, answer, or both, setting forth the grounds upon which the intervention rests, ~~and would rests~~. *The bill would also require the intervenor to serve the order, or notice of the court's decision or order, granting leave to intervene and the pleadings in intervention on all other parties in the action or proceeding, as specified. The bill would also recast some provisions of existing law and make conforming changes to other provisions of law.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 387 of the Code of Civil Procedure is
2 amended to read:
3 387. (a) ~~Upon timely application, any person who has an~~
4 ~~interest in the matter in litigation, or in the success of either of the~~
5 ~~parties, or an interest against both, may intervene in the action or~~
6 ~~proceeding. An~~ *For purposes of this section:*
7 (1) *“Defendant” includes a cross-defendant.*
8 (2) *“Plaintiff” includes a cross-complainant.*
9 (b) ~~An intervention takes place when a third person is permitted~~
10 ~~to become deemed an intervenor, becomes~~ a party to an action or
11 proceeding between other persons, ~~either by joining the other~~
12 ~~persons by doing any of the following:~~
13 (1) *Joining a plaintiff in claiming what is sought by the*
14 ~~complaint, or by uniting in the complaint.~~
15 (2) *Uniting with the a defendant in resisting the claims of the*
16 ~~plaintiff, or by demanding a plaintiff.~~
17 (3) *Demanding anything adversely adverse to both the a*
18 ~~plaintiff and the defendant, and is made by complaint, answer, or~~
19 ~~both, setting forth a defendant.~~
20 (c) *A third person seeking leave of court to intervene in an action*
21 ~~or proceeding shall timely do the following:~~
22 (1) *Set forth the grounds upon which the intervention rests, filed*
23 ~~by leave of the court and served upon the parties to the action or~~
24 ~~proceeding who have not appeared in the same manner as upon~~
25 ~~the commencement of an original action, and upon the attorneys~~
26 ~~of the parties who have appeared, or upon the party if he has~~
27 ~~appeared without an attorney, in the manner provided for service~~
28 ~~of summons or in rests and attach a copy of a proposed complaint~~
29 ~~in intervention, answer in intervention, or both.~~
30 (2) *Serve a copy of the documents submitted to the court in*
31 ~~support of the request for intervention on all other parties who~~
32 ~~have appeared in the action or proceeding in the manner provided~~
33 ~~by Chapter 5 (commencing with Section 1010) of Title 14 of Part~~
34 ~~2. A party served with a complaint or answer in intervention may~~
35 ~~within 30 days after service move, demur, or otherwise plead to~~

1 ~~the complaint or answer in the same manner as to an original~~
2 ~~complaint or answer.~~

3 ~~(b) If any~~

4 *(d) (1) The court shall, upon timely application, permit a third*
5 *person to intervene in the action or proceeding if either of the*
6 *following conditions is satisfied:*

7 *(A) A provision of law confers an unconditional right to*
8 ~~*intervene or if the person intervene.*~~

9 *(B) The person seeking intervention claims an interest relating*
10 ~~*to the property to or transaction which that is the subject of the*~~
11 ~~*action and that person is so situated that the disposition of the*~~
12 ~~*action may as a practical matter impair or impede that person's*~~
13 ~~*ability to protect that interest, unless that person's interest is*~~
14 ~~*adequately represented by one or more of the existing parties, the*~~
15 ~~*court shall, upon timely application, permit that person to intervene.*~~
16 ~~*parties.*~~

17 *(2) The court may, upon timely application, permit a third*
18 *person to intervene in the action or proceeding if the person has*
19 *an interest in the matter in litigation, or in the success of either of*
20 *the parties, or an interest against both.*

21 *(e) If leave to intervene is granted to the court, the intervenor*
22 *shall do both of the following:*

23 *(1) Separately file the complaint in intervention, answer in*
24 *intervention, or both.*

25 *(2) Serve a copy of the order, or the notice of the court's*
26 *decision or order, granting leave to intervene and the pleadings*
27 *in intervention on all other parties in the action or proceeding,*
28 *including any parties who have not appeared, in the same manner*
29 *for service of summons pursuant to Article 3 (commencing with*
30 *Section 415.10) of Chapter 4 of Title 5 of Part 2, or in the manner*
31 *provided by Chapter 5 (commencing with Section 1010) of Title*
32 *14 of Part 2.*

33 *(f) Within 30 days after service of a complaint in intervention*
34 *or answer in intervention, a party may move, demur, or otherwise*
35 *plead to the complaint in intervention or answer in intervention*
36 *in the same manner as to an original complaint or answer*

37 *(g) This section shall not be construed to prevent a third person*
38 *from seeking leave of court to intervene by an ex parte application*
39 *in the manner prescribed by the rules of court adopted by the*
40 *Judicial Council for ex parte applications.*

1 SEC. 2. Section 1032 of the Code of Civil Procedure is
2 amended to read:

3 1032. (a) As used in this section, unless the context clearly
4 requires otherwise:

5 (1) "Complaint" includes a cross-complaint.

6 (2) "Defendant" includes a cross-defendant, a person against
7 whom a complaint is filed, or a party who files an answer in
8 intervention.

9 (3) "Plaintiff" includes a cross-complainant or a party who files
10 a complaint in intervention.

11 (4) "Prevailing party" includes the party with a net monetary
12 recovery, a defendant in whose favor a dismissal is entered, a
13 defendant where neither plaintiff nor defendant obtains any relief,
14 and a defendant as against those plaintiffs who do not recover any
15 relief against that defendant. If any party recovers other than
16 monetary relief and in situations other than as specified, the
17 "prevailing party" shall be as determined by the court, and under
18 those circumstances, the court, in its discretion, may allow costs
19 or not and, if allowed, may apportion costs between the parties on
20 the same or adverse sides pursuant to rules adopted under Section
21 1034.

22 (b) Except as otherwise expressly provided by statute, a
23 prevailing party is entitled as a matter of right to recover costs in
24 any action or proceeding.

25 (c) Nothing in this section shall prohibit parties from stipulating
26 to alternative procedures for awarding costs in the litigation
27 pursuant to rules adopted under Section 1034.

28 SEC. 3. Section 1038 of the Code of Civil Procedure is
29 amended to read:

30 1038. (a) In any civil proceeding under the Government Claims
31 Act (Division 3.6 (commencing with Section 810) of Title 1 of the
32 Government Code) or for express or implied indemnity or for
33 contribution in any civil action, the court, upon motion of the
34 defendant or cross-defendant, shall, at the time of the granting of
35 any summary judgment, motion for directed verdict, motion for
36 judgment under Section 631.8, or any nonsuit dismissing the
37 moving party other than the plaintiff, petitioner, cross-complainant,
38 or intervenor, or at a later time set forth by rule of the Judicial
39 Council adopted under Section 1034, determine whether or not
40 the plaintiff, petitioner, cross-complainant, or intervenor brought

1 the proceeding with reasonable cause and in the good faith belief
2 that there was a justifiable controversy under the facts and law
3 which warranted the filing of the complaint, petition,
4 cross-complaint, or complaint or answer in intervention. If the
5 court should determine that the proceeding was not brought in
6 good faith and with reasonable cause, an additional issue shall be
7 decided as to the defense costs reasonably and necessarily incurred
8 by the party or parties opposing the proceeding, and the court shall
9 render judgment in favor of that party in the amount of all
10 reasonable and necessary defense costs, in addition to those costs
11 normally awarded to the prevailing party. An award of defense
12 costs under this section shall not be made except on notice
13 contained in a party's papers and an opportunity to be heard.

14 (b) "Defense costs," as used in this section, shall include
15 reasonable attorney's fees, expert witness fees, the expense of
16 services of experts, advisers, and consultants in defense of the
17 proceeding, and where reasonably and necessarily incurred in
18 defending the proceeding.

19 (c) This section shall be applicable only on motion made before
20 the discharge of the jury or entry of judgment, and any party
21 requesting the relief pursuant to this section waives any right to
22 seek damages for malicious prosecution. Failure to make the
23 motion shall not be deemed a waiver of the right to pursue a
24 malicious prosecution action.

25 (d) This section shall only apply if the defendant or
26 cross-defendant has made a motion for summary judgment,
27 judgment under Section 631.8, directed verdict, or nonsuit and the
28 motion is granted.